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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/549,854

09/23/2005

Toshifumi Mihashi

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EXAMINER

DINH, JACK

ART UNIT

PAPER NUMBER

2873

MAIL DATE

DELIVERY MODE

04/17/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/549,854	MIHASHI, TOSHIFUMI	
	Examiner	Art Unit	
	JACK DINH	2873	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6, 8-16, 18-21, 23-26, 28-36, 38-41, 43-47 and 49-52 is/are rejected.
- 7) ☒ Claim(s) 7, 17, 22, 27, 37, 42 and 48 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
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| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20050923</u> . | 6) <input checked="" type="checkbox"/> Other: <u>DETAILED ACTION</u> . |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of claims 1 and 2 in the reply filed on 01/28/08 is acknowledged. However, upon further consideration, the previous restriction will be withdrawn. All claims will be considered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3-6, 8-16, 18-21, 23-26, 28-36, 38-41, 43-47 and 49-52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 3, 8, 13, 18, 23, 28, 33, 38, 44 and 49, the phrase “the measuring means” renders the claims indefinite. It is unclear whether the phrase refers to the “measuring means” recited in independent claim 1 or the “eye movement measuring means” in each respective referring dependent claim. Claims 4-6, 9-11, 14-16, 18-21, 23-26, 28-31, 33-36, 38-41, 44-47 and 49-52 are rejected based upon the rejected base claim.

Regarding claims 9, 19, 29, 39 and 50, the phrase “the calculating means” on the last line renders the claims indefinite. It is unclear whether the phrase refers to the “calculating means”

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recited in claim 7, 17, 27, 37 or 48, for calculating the refraction of the eye or the “calculating means” in each respective referring dependent claim for calculating the direction/displacement of the eye movement.

Regarding claims 10, 20, 30, 40 and 51, the phrase “the calculating means” renders the claims indefinite. It is unclear whether the phrase refers to the “calculating means” recited in claim 7, 17, 27, 37 or 48, for calculating the refraction of the eye or the “calculating means” in claim 9, 19, 29, 39 or 50, for calculating the direction/displacement of the eye movement.

Regarding claims 12, 32 and 43, the phrase “the separating means for separating an optical axis of the measurement light beam from the light source from an optical axis of the reflection light of the measurement light beam which is reflected on the eye to be examined” renders the claim indefinite. The described operation of the device in the specification does not mention about the separation at surface 24 or the need to do so. Therefore, it is unclear of the configuration being claimed. The rejection below is based on the broadest possible interpretation.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2 and 12 are rejected under 35 U.S.C. 102(e) as being unpatentable by Lai et al. (US Patent 6,761,454).

Regarding claim 1, Lai (figure 3; col. 4, line 20 – col. 5, line 10) discloses a refraction measuring instrument comprising measuring means **32-40** that has a light source **24** for emitting a measurement light beam to an eye **15** to be examined and performs objective measurement on refraction of the eye to be examined based on reflection light of the measurement light beam emitted from the light source, which is reflected on the eye to be examined, and an optical system **20** for simultaneously guiding the measurement light beam emitted from the light source and visible light incident thereon from an outside to the eye to be examined, wherein the measuring means measures the refraction of the eye to be examined while a subject is visually recognizing the outside through the visible light based on the reflection light of the measurement light beam which is guided to the eye to be examined through the optical system and reflected on the eye to be examined.

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Regarding claim 2, Lai (figure 3) further discloses that the optical system comprises combining means **20** for combining an optical axis of the measurement light beam with an optical axis of the visible light.

Regarding claim 12, Lai (figure 3) further discloses a separating means **28** for separating an optical axis of the measurement light beam from the light source from an optical axis of the reflection light of the measurement light beam which is reflected on the eye to be examined.

Allowable Subject Matter

Claims 7, 17, 22, 27, 37, 42 and 48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Regarding claims 7 and 17, the prior art fails to a mark projection means, an imaging means, and a calculating means. Regarding claim 22, the prior art fails to disclose that the combining means comprises a free-form-surface prism and a deviation angle correcting prism.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JACK DINH whose telephone number is (571)272-2327. The examiner can normally be reached on M-F (9:30 AM - 6:00 PM).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ricky L. Mack can be reached on 571-272-2333. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jack Dinh/
Examiner, Art Unit 2873
04/07/08

/Ricky L. Mack/
Supervisory Patent Examiner, Art Unit 2873